

To: White, Terri-A[White.Terri-A@epa.gov]; rogers, rick[rogers.rick@epa.gov]; Ryan, Daniel[Ryan.Daniel@epa.gov]
Cc: Armstead, John A.[Armstead.John@epa.gov]; Ajl, Diane[Ajl.Diane@epa.gov]; Briggs-Steuteville, Sheila[Briggs-Steuteville.Sheila@epa.gov]; Libertz, Catherine[Libertz.Catherine@epa.gov]
From: Ferrell, Mark
Sent: Tue 6/24/2014 1:15:01 PM
Subject: MCHM - Hurricane Landfill

Hurricane landfill continues to argue Crude MCHM not considered 'hazardous waste'

By Ryan Quinn, Staff writer 0 0

<http://www.wvgazette.com/article/20140623/GZ01/140629779/1419>

The Hurricane landfill that accepted 228 tons of Freedom Industries wastewater mixed with sawdust from the Jan. 9 spill cleanup has again argued that a federal lawsuit against it should be dismissed. The Friday filing is the latest in a back-and-forth fight over the landfill's effort to dismiss the city of Hurricane's and Putnam County's case before it goes to trial. Arguments for both sides revolve around whether Crude MCHM, the main component of the leak that fouled the water of roughly 300,000 West Virginians, is considered "hazardous waste" and who defines that term. The city and county filed the suit on May 5 against the Disposal Services landfill and its owner, Waste Management, in the Southern District of West Virginia, seeking to force the defendants to remove the contaminated material. The defendants filed a motion to dismiss on May 29, arguing the case should be thrown out partly because the city and county didn't give a 90-day notice of endangerment to the companies required under the federal Resource Conservation and Recovery Act, or RCRA, before filing suit. They argued that notice is required, unless the chemicals deposited at the landfill are considered hazardous waste. On June 13, the city and county requested that U.S. District Judge Robert C. Chambers dismiss the defendants' motion to dismiss, arguing the landfill and Waste Management misunderstand the RCRA and arguing the court "has the authority and responsibility to establish" a toxicity standard under the state Hazardous Waste Management Act for Crude MCHM. They argue this threshold should be 1 part per million — the same as the emergency threshold established by the Centers for Disease Control and Prevention in the hours following the leak — and that concentrations above that level should be considered "hazardous waste." Disposal Service has said that state Department of Environmental Protection testing has shown the wastewater deposited in the landfill contained as much as 81 parts per million of Crude MCHM. In Friday's filing, the landfill argues the city and county's complaint "fails to allege that the Crude MCHM constitutes a hazardous waste under RCRA." It argues that neither the DEP nor the federal Environmental Protection Agency have chosen to regulate Crude MCHM as a hazardous waste, and argues that "Congress did not intend for the statutory definition of hazardous waste to be the basis for determining regulatory

compliance under RCRA,” but rather wanted the EPA to make the call. “EPA is, in fact, the only entity which may determine what constitutes a hazardous waste under the federal RCRA,” the landfill argues. It also argues that the court cannot override EPA’s authority to regulate Crude MCHM and contends that while the chemical does contain a “small percentage” of methanol, which is listed as a hazardous waste under federal regulations, this does not make Crude MCHM a hazardous waste. Reach Ryan Quinn at ryan.quinn@wvgazette.com or 304-348-1254

From: rogers, rick

Sent: Monday, June 16, 2014 4:52 PM

To: Ryan, Daniel; White, Terri-A

Cc: Armstead, John A.; Ajl, Diane; Briggs-Steuteville, Sheila

Subject: FW: MCHM question

Ex. 5 - Deliberative

If you and Shawn are OK with this version, John would like to get it in the mail this Thursday.

Thanks,

Rick Rogers

[illegible]

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From: Ajl, Diane
Sent: Monday, June 16, 2014 3:35 PM
To: Armstead, John A.; rogers, rick
Cc: Briggs-Steuteville, Sheila
Subject: FW: MCHM question

Hi John and Sheila –

See the revised MCHM letter to WVA above.

Questions? Please don't hesitate to give Sheila or me a call.

Thanks –

Diane

From: Briggs-Steuteville, Sheila
Sent: Monday, June 16, 2014 3:32 PM
To: Ajl, Diane
Subject: MCHM question

Hi Diane,

Here is the revised letter based on Marcia's comments.

Thanks,

Sheila